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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,012	05/06/2004	Donald Tilton		9637
42515	7590	03/17/2006		
JOSEPH E. FUNK 82 CHASE RD LONDONDERRY, NH 03053			EXAMINER MARSH, STEVEN M	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/840,012

Applicant(s)

TILTON, DONALD

Examiner

Steven M. Marsh

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

This is the first office action for U.S. Application 10/840,012 for a Baluster Hangar filed by Donald Tilton on May 6, 2004.

Claim Objections

Claims 1 and 2 are objected to because of the following informalities: The word "hangar" in the claims should be deleted and replaced with - -hanger- -. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, Applicant recites the limitations "furthest from the hook" and "nearest the hook" for the first and third cross rods, respectively. However, Applicant does not clarify what the rods are nearest and furthest to the hook with respect to. Claim 2 claims the apparatus of a hanger in the preamble, but then claims the steps of a process of attaching the hanger to the sides of balusters. It is unclear whether Applicant is attempting to claim a baluster or a method for mounting a baluster. Claim 2 also recites the limitation "the balusters" and "the first cross bar" in the 1st and 2nd sentences. There is insufficient antecedent basis for this limitation in the

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claim. Due to the unclear nature of the claims, the claim 1 has been examined to the best extent possible and claim 2 has not been searched on its merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,054,209 to Solomon. Solomon discloses a hanger attachable to the sides of two spaced vertical members for hanging items to the sides of members. The hanger has an elongated portion (14 and 16) with a hook (23) at one end for hanging items and a first cross rod (12) attached permanently to the elongated portion furthest from the hook. There is a second cross rod (17) attached to the elongated portion in a manner that it may be rotated about the elongated portion, but is constrained from moving along the elongated portion. There is also a third cross rod (19) nearest the hook that is attached to the elongated portion in a manner that it may be rotated about the elongated portion, and it may also be moved along the elongated portion. The first and third cross rods could press against a first side of the two spaced members and the second cross rod presses against a second side of the two spaced members that is opposite the first side.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 6,634,609 B2 to Zheng

U.S. Patent Des. 354,412 to Emery

U.S. Patent Des. 382,434 to Klein et al.

U.S. Patent Des. 471,389 S to Kollner

The above patents disclose various hangers and supports with cross rods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (571) 272-6819. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3597.

Shm

Steven M. Marsh

March 13, 2006


JAMON O. RAMIREZ
PRIMARY EXAMINER